

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive Braintree, MA www.braintreema.gov

Zoning Board of Appeals (ZBA)

Meeting Notes February 23, 2016

IN ATTENDANCE: Stephen Karll, Chair

Michael Ford, Member Michael Calder, Member Richard McDonough, Member

ALSO PRESENT: Carolyn Murray, Interim Town Solicitor

Jeremy Rosenberger, Zoning Administrator

Mr. Karll called the meeting to order at 7:00pm.

OLD BUSINESS:

1) Petition Number: 14-33 Petitioner: Bonnie Tan RE: 639 Washington Street

Bonnie Tan has requested an extension of the petition, case number 14-33.

On a motion made and seconded, the Board unanimously voted to continue the petition at the March 22, 2016 Zoning Board of Appeal meeting.

2) Petition Number: 15-10

Petitioner: Thayer Academy & Jay Hanflig

RE: 60-80 Campanelli Drive

Thayer Academy has requested an extension of the petition, case number 15-10.

On a motion made and seconded, the Board unanimously voted to continue the petition at a Special Zoning Board of Appeal meeting on February 10, 2016.

3) Petition No. 15-42

Petitioner: Krishnakant Patel

RE: 405 Commercial Street, Braintree, MA

Present: Krishnakant Patel, Petitioner; Ken Maydoney, realtor

This is a petition filed by Krishnakant Patel (Owner), 503 Commercial Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 701 to demolish existing two-family dwelling and erect a new two-story, two-family dwelling consisting of 6,309.80 sq. ft. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located 405 Commercial Street, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 3013, Plot 72, and contains a land area of +/- 22,818 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a hearing by the Zoning Board of Appeals was scheduled for November 24, 2015 at Town Hall, One JFK Memorial Drive, Braintree, MA. The hearing was continued by mutual agreement to December 22, 2015, and continued by mutual agreement to February 23, 2016. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate

Evidence

At the initial public hearing, Krishnakant Patel, the petitioner, joined by Ken Maydoney, realtor, explained he is seeking to demolish an existing two-family structure of approximately 1,544 sq. ft. that is in disrepair, and replace it with a new two-family dwelling, approximately 70 feet by 58 feet in size and containing approximately 5,886 sq. ft. of living space. The petitioner's existing house is nonconforming, as the existing dwelling is an existing non-conforming two family dwelling. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

After discussion, Chairman Karll requested the applicant agree to continue the hearing to December 22, 2015 due to concerns regarding the proposed additional kitchen areas in each of the dwelling's basements, and lack of discussions with abutters and neighbors. Mr. Patel agreed to update the proposed plans and meet with the abutters and neighbors to discuss the project before the next hearing date.

At the continued public hearing on December 22, 2015, Mr. Patel provided updated plans reflecting the removal of one of the two proposed basement kitchens. They also removed a proposed shower/bath from the bathroom located in the basement of the townhouse with the basement kitchen. The plans also reflected a proposed visitor parking area for two vehicles to the rear of the property, accessed from Tingley Road. Mr. Ford said he was concerned that due to the size of the proposed project, the number of off-street parking spaces provided may be insufficient. Chairman Karll noted that due to the concerns discussed thus far by the Board and the neighborhood, the Board should visit the site at each member's convenience. Mr. Patel agreed to continue the hearing to February 23, 2016 to allow for the Board members to visit the site.

At the continued public hearing on February 23, 2016, Chairman Karll asked the petitioners if they had given any thought to the design of the proposed project. Mr. Maydoney felt that the abutters were not concerned regarding the design except for exterior materials.

As grounds for the finding, the petitioner noted the new dwellings will significantly improve the neighborhood due to the existing blighted property and dwelling. Furthermore, the petitioner noted the proposal will not create any zoning deficiencies. Lastly, the Mr. Patel asserted the proposed new building would be similar in scale to existing two-family dwellings in the immediate neighborhood.

The applicant presented the plans titled "Proposed House Layout, 405 Commercial Street, Braintree, Massachusetts", dated October 18, 2015 and prepared by James E. McGrath, PLS. of Weymouth, MA. The applicant also presented site plans and architectural renderings entitled "Site Layout", "Basement Plan", "First Floor Plan", "Second Floor Plan", "Roof Plan", "Section View", "Front Elevation", "Side Elevation", "Back Elevation", and "Landscaping Plan", labeled as A-01 thru A-10, dated October 18, 2015 and prepared by Chintan and Nisha Patel.

The Planning Board submitted a favorable recommendation with the condition the townhouse basements not be used as separate dwelling units.

On November 24, 2015, Ellen and Janet Duncan of 407 Commercial Street, spoke that they was not opposed to the proposed project, but had concerns about the size, design and proposed additional basement kitchens. Also on November 24, 2015, Mike Reilly of 408 Commercial Street spoke that he was concerned about the proposed size and the two-family use. Braintree Town Council President Thomas M. Bowes submitted a letter on November 23, 2015, requesting the petitioner reach out to the neighbors and inform them of the proposed project.

On December 22, 2015, Mike Reilly of 408 Commercial Street spoke that he was still concerned regarding the size and traffic impact of the proposed project. Town of Braintree Council President Thomas M. Bowes, District 3 Councilor, spoke about concerns regarding the granting of the two-family occupancy permit, proximity of the proposed garages to the sidewalk and new parking area off Tingley Road. John Sullivan of 12 Front Street spoke that he was concerned about the lack of proposed off-street parking and potential traffic impacts of the project. Ms. Garrity of 9 Tingley Road spoke about concerns regarding sewer and water impacts of the proposed project.

No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the proposed size of the new two-family dwelling, lack of off-street parking provided and the design would be out of character for the immediate neighborhood. As a result, the Board further found that the proposed alterations and continuance of the pre-existing nonconforming two-family use, at a significantly larger size, would be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to deny the requested finding, based on the plans submitted.

4) Petition No. 15-55

Petitioner: Todd and Mary Ann Jackle

RE: 27 Woodedge Lane, Braintree, MA

Present: Carl Johnson, Petitioner's Attorney; Todd and Mary Ann Jackle, Petitioner's

Todd and Mary Ann Jackle, 90 Harness Lane, Braintree, MA 02184 (Todd and MaryAnn Jackle purchased 27 Woodedge Lane on December 3, 2015) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609, and 701 to demolish an existing 1,268 sq. ft. single family dwelling and construct a two-story, 2,800 sq. ft. single family dwelling with farmer's porch. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 27 Woodedge Lane, Braintree, MA 02184 and is within a Watershed RB Overlay District, as shown on Assessors Map 1056, Plot 17, and contains a land area of +/- 14,026 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA at 7 p.m. on January 26, 2016 and continued to February 23, 2016. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate

Evidence

At the January 26, 2016 public hearing, Todd and Mary Ann Jackle, the petitioners, explained they wish to demolish an existing 1,268 sq. ft. single family dwelling and construct a two-story, 2,800 sq. ft. single family dwelling with farmer's porch at 27 Woodedge Lane. After discussion, Chairman Karll requested the applicant agree to continue the hearing to February 23, 2016 due to the proposed plans depicting the existing driveway encroaching onto the adjacent property. Mr. Karll explained that by either obtaining an easement or removing the encroachment, the Board would be able to discuss the petitioner further.

At the continued public hearing on February 23, 2016, Attorney Carl R. Johnson III appeared on behalf of the petitioner and submitted a revised petition and Appeal Summary, revised Plot Plan dated February 18, 2016, copy of the subdivision plan filed in the Norfolk Land Court in May 28, 1951 and copy of the Zoning Ordinance provisions, Lot Size dated May 20, 1948.

Attorney Johnson presented evidence and testified that the lot was created in 1951, pre-dated the subdivision control law; contains 14,179 sq. ft. based upon the survey plan and met and exceeded the lot size and width requirements contained in the May 1948 Zoning Bylaw requirements of 7,500 sq. ft. and 70 ft. lot width at the placement of building on the lot. The lot was validly created and became non-conforming as to lot size and width by the 1957 Zoning Bylaw amendment. The 1948 zoning dimensional requirement had no frontage requirement. Attorney Johnson testified that the lot was protected by the "Residential Exception" set forth in G.L. c. 40A, §6 para 1. The existing dwelling proposed to be razed is a conforming structure on a valid dimensionally non-conforming lot. The new proposal razes the existing dwelling with attached garage. Attorney Johnson testified that the reconstruction of a conforming structure on a protected lot does not require a finding by the ZBA, because there is no intensification of any non-conformity aspect or creation of any new non-conformity. Furthermore, Mr. Johnson spoke the Watershed Protection District by-law §135,609 C (6) provides that repairs, maintenance and

reconstruction of structures (new structures) and use lawfully existing prior to May 1982 may increase impervious coverage from 20% to "not to exceed 50%" of the lot.

The Petitioner seeks a frontage variance for the 49 ft. of frontage along the Woodedge Lane culde-sac, as no frontage was required by the zoning by law when the lot was created. The 50 ft. frontage requirement was added to the Zoning Bylaw in a 1957 amendment.

As grounds for the variance, Attorney Johnson noted the lot was a validly created lot in 1952. The Zoning Bylaw in effect at the time required a minimum of 7,500 sq. ft. and 70 ft. of lot width. There was no minimum frontage requirement. Secondly, the lot is a significantly irregularly shaped lot, five-side or pentagonal in nature. Attorney Johnson not the irregular shape of the lot directly impacts the basis for the requested relief. Lastly, Mr. Johnson described the existing foundation is supported by footings that are 3 feet in the ground, where the building code requires a minimum of 4 feet. As such, the existing conditions create an unsafe condition and the petitioner seeks to alleviate the issue by demolishing the structure and creating a foundation that meets the current building code requirements.

The applicant presented the plan entitled "Plot Plan, 27 Woodedge Lane, Braintree, Massachusetts", dated February 18, 2016 and prepared by Norman H. Clapp of Randolph, MA. The applicant also presented site plans and architectural renderings untitled, labeled as Pages 1-11, dated December 10, 2015 and prepared by Cave Corp. of Middleboro, MA.

The Planning Board submitted a no vote recommendation. Dominic and Dana Rinaldi of 21 Woodedge Lane submitted a letter of support on January 14, 2016. In addition, William Crowe of 22 Woodedge Lane submitted a letter of support on January 14, 2016. Furthermore, Carol Whittall of 15 Woodedge Lane submitted a letter of support on January 14, 2016. Lastly, Charles and Katherine Zaniboni of 23 Old Country Way submitted a letter of support on January 14, 2016. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size and lot width, as noted above. The Board also found the lot and structure is entitled to the residential exception protections of M.G.L. 40A, Section 6 due to the conforming setbacks of the structure. As a result, the Board found the proposed new dwelling would not be more detrimental to the neighborhood than the existing dwelling. In addition, the Board found the irregular shape of the lot and financial hardship with regard to the existing foundation that does not meet building code requirements, meets the thresholds for granting of a variance. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, and will be appropriately designed.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested findings, pursuant to Bylaw Section 135-403, and variances from frontage, pursuant to Bylaw Section 135-407.

5) Petition No. 15-60
Petitioner: Dung Nguyen
RE: 64 Davis Road, Braintree, MA

Present: Sinh Nguyen, Petitioner's Son; Ken Nguyen

This is a petition filed by Dung Nguyen, 64 Davis Road, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 609 and 701 to demolish an existing 1,440 sq. ft. single family dwelling and construct a two and half story, +/- 4,424 sq. ft. single family dwelling. The applicant seeks a permit, variance and/or finding that the proposed alteration will not be more detrimental to the neighborhood. The property is located at 64 Davis Road, Braintree, MA 02184, and is within a Watershed A District Zone, as shown on Assessors Map 2042, Plot 64, and contains a land area of +/- 20,000 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals on January 26, 2016, and mutually continued to February 23, 2016 at Town Hall, One JFK Memorial Drive, Braintree, MA at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Michael Calder and Richard McDonough, Members; and Stephen Karll, Chairman, Alternate.

Evidence

At the initial public hearing, Sinh Nguyen, son of the petitioner, joined by Ken Nguyen, explained that he wishes to demolish an existing 1,440 sq. ft. single family dwelling and construct a two and half story, +/- 4,424 sq. ft. single family dwelling at 64 Davis Road. After discussion, Chairman Karll requested the applicant agree to continue the hearing to February 23, 2016 due to the proposed plans not indicating driveways. Mr. Karll explained that by providing all impervious surfaces proposed, the Board would be able to determine if a variance for lot coverage is required.

At the continued public hearing on February 23, 2016, Sinh Nguyen provided updated plans reflecting an approximately 38'x28' driveway. The updated plans also depict the attached garage, reoriented to front Davis Road and reduced to two (2) garage bays. With the proposed driveway, the lot coverage would be approximately 18.5%. Staff determined the proposal would be under the maximum 20% lot coverage requirement. The petitioner's lot is nonconforming, as it contains only 20,000 sq. ft., where 43,560 sq. ft. is required. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the single family dwelling will be constructed similar to existing neighborhood characteristics. The petitioner also noted the proposed single family dwelling will meet all dimensional and density requirements except for lot area.

The applicant presented the plan entitled "Plan of Land in Braintree, Massachusetts, 64 Davis Road," dated February 8, 2016 and prepared by C.S. Kelley Land Surveyors of Pembroke, MA. The applicant also presented plans and architectural renderings titled "Elevations", "First Floor Plan & Schedules", "Second Floor Plan & Details", "Foundation Plan", "Floor Framing Plans", and "Roof & Ceiling Plans", dated January 29, 2016 and prepared by Creative Designs by Scott Rapoza of Mansfield. MA.

The Planning Board submitted a recommendation of no vote. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size as noted above. The Board also found that the proposed new single family dwelling will not create any new zoning non-conformity and will be similar to newly constructed dwellings in the neighborhood. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

NEW BUSINESS:

1) Petition No. 15-61

Petitioner: BSC Partners, LLC & Town of Braintree

RE: 128 & 0 Town Street, Braintree, MA

Present: Town of Braintree Mayor Joseph Sullivan, Petitioner; Scott Lacey, Petitioner's

Attorney

Scotty Lacey requested an extension of the petition, case number 15-61.

On a motion made and seconded, the Board unanimously voted to continue the petition at the March 22, 2016 Zoning Board of Appeal meeting.

2) Petition No. 16-01

Petitioner: Erin O'Brien and Peter Werner

RE: 31 Mann Street, Braintree, MA

Present: Erin O'Brien and Peter Werner, Petitioners

This is a petition filed by Erin O'Brien and Peter Werner, 31 Mann Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609 and 701 to construct a 2.5 story attached garage addition with living space above. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 31 Mann Street, Braintree, MA 02184 and is within a Watershed B District Zone, as shown on Assessors Map 1094, Plot 40, and contains a land area of +/- 8,179 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on February 23, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Richard McDonough, Members; and Michael Ford, Alternate.

Evidence

Erin O'Brien and Peter Werner, the petitioners, explained they wish to add a one car garage with office space above, in addition to a mudroom, onto an existing single family dwelling. The petitioner's lot is nonconforming, as it contains only 8,179 sq. ft., where 43,560 sq. ft. is required and provides only +/- 70 feet of lot width, where 100 feet is required. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

In addition, a variance is required for relief from the side yard setback requirements due to encroachment of the proposed garage into the side yard area. The Zoning Bylaw requires a side yard setback of 10 feet, but the proposed garage addition will be 5 feet from the side yard line. Furthermore, variances are required for maximum lot coverage and minimum open space due to the proposed expansion not meeting the dimensional requirements and density of Section 135-701, pursuant to Section 135-609(c). As a result, the addition is not entitled to the exemption of maximum 50% lot coverage. The Zoning Bylaw allows a maximum 20% lot coverage, but the proposal would provide 30% lot coverage. Furthermore, the Zoning Bylaw requires a minimum open space of 80% of the lot, but the proposal only provides 70%.

As grounds for the variance, the petitioners noted the irregular shape of the lot, including wetlands and a rear sloping topography, limit the placement of the garage addition to the proposed location. Secondly, the design of the proposed addition will be harmony with the existing neighborhood. Chairman Karll questioned the petitioners if they would be able to reduce the proposed width of the garage or remove the proposed mudroom to meet the side yard setback. The petitioners responded that any reduction would reduce the functionality of the proposed garage. In addition, they responded removal of the mudroom would reduce the value of the proposed addition. The petitioners also noted the adjacent neighbor's dwelling is approximately 25 feet from the proposed garage addition.

The applicant presented the plan entitled "Plot Plan, 31 Mann Street, Braintree, Massachusetts", dated November 29, 2010 and prepared by CCR Associates of Quincy, MA. The applicant also presented site plans and architectural renderings entitled "Architectual Site Plan", "First Floor Plan", "Building Exterior Elevs-N&E", "Building Exterior Elevs-S", and "Second Floor Plan", labeled as A0-01, A1-01, A3-01, A3-02 and A1-02, dated September 21, 2015 and prepared by Alvarez Design LLC of Belmont, MA.

The Planning Board submitted an unfavorable recommendation. Deborah Weiner Wedge of 205 Wildwood spoke in opposition due to the potential for increasing existing flooding problems on their property. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size and lot width, as noted above. In addition, the Board found the irregular shape of the lot and sloping rear yard area with retaining walls presents a hardship with regard to the addition of the garage, significantly limiting its placement. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, and will be appropriately designed.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and variances from side yard, lot coverage and open space requirements, pursuant to Bylaw Section 135-407.

3) Petition No. 16-02

Petitioner: Brendan and Ellen Finn

RE: 96 Prospect Street North, Braintree, MA

Present: Brendan and Ellen Finn, Petitioners

This is a petition filed by Brendan and Ellen Finn, 96 Prospect Street North, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to remove an existing rear deck and construct a new 660 sq. ft., two story addition. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 96 Prospect Street North, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 2032, Plot 12, and contains a land area of +/- 4,417 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on February 23, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate

Evidence

The petitioners, Brendan and Ellen Finn, explained they seek to remove an existing rear deck and construct a new 660 sq. ft., two story addition. The petitioner's lot is nonconforming, as it contains only 4,417 sq. ft., where 15,000 sq. ft. is required, provides only 50 feet of lot width, where 100 feet is required and provides only 88 feet of lot depth, where 100 feet is required. The petitioner's existing house is nonconforming as to the front yard setback; the house is located 12.1 feet from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 feet. The petitioner's existing house is also nonconforming as to the side yard setback; the house is located 6 feet from the side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 feet. The petitioner's existing house is also nonconforming as to the rear yard setback; the house is located 27 feet from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 feet. The proposed alteration will not create any new nonconformity and reduce the rear yard setback to 28.7 ft.; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the rear addition will be constructed similar to existing neighborhood characteristics. The petitioner also noted the addition would not create any new zoning nonconformity, and slightly reduce the rear yard setback nonconformity.

The applicant presented the plan entitled "Plot Plan, 96 Prospect Street North, Braintree, Massachusetts", dated December 19, 2015 and prepared by James E. McGrath, PLS. The

applicant also presented untitled and undated 1st and 2nd floor plans. The applicant also presented architectural elevations entitled "Addition, 96 Prospect Street", undated and prepared by Wally McKinnon of Weymouth, MA.

The Planning Board submitted a recommendation of no vote. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size, lot width and lot depth, as noted above. In addition, the Board found that the existing structure is pre-existing nonconforming in terms of the front, side and rear yard setbacks. The Board also found that the proposed addition will not create any new zoning non-conformity. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 3-0 to accept the meeting minutes of January 26, 2015.

The Board adjourned the meeting at 10:00 pm.